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DATO' SERI ANWAR IBRAHIM

v.

PP

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FEDERAL COURT, PUTRAJAYA
ARIFIN ZAKARIA CJ (MALAYA)
JAMES FOONG FCJ
RAUS SHARIF FCJ
[CRIMINAL APPEAL NO: 05-73-2010(W)]

C

18 OCTOBER 2010

CRIMINAL PROCEDURE: *Appeal - Decision of trial judge - Whether appealable - Whether trial judge's ruling a "decision" as defined in s. 3 Courts of Judicature Act 1964 - Ruling made by trial court in the course*

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of a trial - Whether right of aggrieved party compromised

WORDS & PHRASES: *"decision" - Courts of Judicature Act 1964, s. 3 - Definition of*

The present appeal related to a ruling made by the trial judge in

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an ongoing criminal trial in the High Court, where the appellant was facing a charge under s. 377B of the Penal Code. The ruling arose from the appellant's application for a statement of the complainant – recorded under s. 112 of the Criminal Procedure Code – to be produced for the appellant's examination. The trial

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judge dismissed the application. On appeal, the Court of Appeal held that that ruling of the trial judge did not fall within the term "decision" as defined in s. 3 of the Courts of Judicature Act 1964 ('CJA') and, thus, was not appealable. Hence, the instant appeal in which the only issue requiring determination was whether the trial

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judge's decision was appealable.

Held (dismissing the appeal)
Per Arifin Zakaria CJ (Malaya) delivering the judgment of the court:

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(1) The underlying reason behind the amendment to the definition of "decision" in s. 3 of the CJA is to stop parties from stalling a trial before the trial court by filing appeal after appeal on rulings made by the trial court in the course of a trial. Apart

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from that, the definition of "decision" by itself is sufficiently clear and it is the court's duty to give effect to the same.

Justice demands that cases should move without unnecessary interruption to their final conclusion. That is what the amendment seeks to achieve. The right of a party who is aggrieved by a ruling, after all, is not being compromised as the party can always raise the issue during the appeal, if any, to be filed after the trial process is concluded. Therefore, the ruling of the trial court in this case was not a "decision" as defined in s. 3 of the CJA and it was not appealable. (paras 24, 25 & 26)

Bahasa Malaysia *Translation Of Headnotes*

Rayuan semasa berkaitan dengan suatu perintah yang dibuat oleh hakim perbicaraan dalam satu perbicaraan jenayah yang sedang berjalan di Mahkamah Tinggi, di mana perayu menghadapi suatu tuduhan di bawah s. 377B Kanun Keseksaan. Perintah itu timbul dari permohonan perayu bagi pernyataan pengadu – yang direkod di bawah s. 112 Kanun Tatacara Jenayah – dikemukakan untuk dikaji oleh perayu. Hakim perbicaraan menolak permohonan tersebut. Atas rayuan, Mahkamah Rayuan memutuskan bahawa perintah tersebut hakim perbicaraan tidak termasuk dalam terma "keputusan" seperti yang dijelaskan dalam s. 3 Akta Mahkamah Kehakiman 1964 ('AMK') dan, oleh itu, rayuan tidak boleh dibuat terhadapnya. Oleh yang demikian, rayuan semasa di mana isu tunggal yang perlu ditentukan adalah sama ada rayuan boleh dibuat terhadap keputusan tersebut hakim perbicaraan.

Diputuskan (menolak rayuan)
Oleh Arifin Zakaria HB (Malaya) menyampaikan penghakiman mahkamah:

(1) Sebab yang mendasari pindaan kepada definasi "keputusan" dalam s. 3 AMK adalah untuk menghentikan pihak-pihak dari melengahkan suatu perbicaraan di depan mahkamah perbicaraan dengan memfailkan rayuan demi rayuan atas perintah-perintah yang dibuat oleh mahkamah perbicaraan semasa perbicaraan. Selain itu, definasi "keputusan" sendirinya cukup jelas dan ia merupakan tugas mahkamah untuk memberi efek kepadanya. Keadilan menegaskan bahawa kes-kes sepatutnya berterusan tanpa gangguan yang tidak diperlukan sehingga penyudahan muktamad mereka. Itulah yang pindaan tersebut cuba mencapai. Hak sesuatu pihak yang terkilan oleh suatu perintah, akhirnya,

A tidak dijejaskan kerana pihak tersebut boleh membangkitkan isu itu semasa rayuan, jika ada, untuk difailkan selepas proses perbicaraan diakhiri. Oleh yang demikian, perintah mahkamah perbicaraan dalam kes ini bukan suatu "keputusan" seperti yang dijelaskan dalam s. 3 AMK dan rayuan tidak boleh dibuat
B terhadapnya.

Case(s) referred to:
Alistair Greene v. Half Moon Bay Hotel (Privy Council Appeal No 9 of 2008) (Unreported) ***(refd)***
Ankur Nath Ganguli v. PP [1956] 1 LNS 9 HC ***(refd)***
C *Dato' Seri Anwar Ibrahim v. PP [1999] 1 CLJ 537 CA* ***(refd)***
Dato' Seri Anwar Ibrahim v. PP [2010] 4 CLJ 265 FC ***(refd)***
Husdi v. PP [1980] 1 LNS 29 FC ***(refd)***
Lorraine Phylis Cohen & Anor v. PP [1989] 2 CLJ 131; [1989] 1 CLJ 84 (Rep) SC ***(refd)***
D *Nathan v. PP [1972] 1 CLJ 99 HC* ***(refd)***
PP v. Hoo Chang Chwen [1962] 1 CLJ 123 HC ***(refd)***
Saad Abas & Anor v. PP [1999] 4 CLJ 575 CA ***(refd)***
Wendal Swann v. Attorney General of the Turks and Caicos Islands (Privy Council Appeal No 43 of 2008) (Unreported) ***(refd)***

E **Legislation referred to:**
Courts of Judicature Act 1964, ss. 3, 50(1), (2)
Criminal Procedure Code, ss. 51, 51A, 112
Evidence Act 1950, s. 145
Penal Code, ss. 377B, 377C
F Rules of the Federal Court 1995, r. 91(1)

Other source(s) referred to:
Halsbury's Laws of England, 4th edn, vol. 26, para. 501

For the appellant - Karpal Singh (SN Nair with him); M/s Karpal Singh & Co
G *For the respondent - Datuk Mohd Yusof Zainal Abiden (Dato' Nordin Hassan, Wong Chiang Kiat, Noorin Badarudin, Mohd Hanafiah Zakaria, Mira Mirna Musa & Naidatul Athirah Azman with him); AG's Chambers*

[Appeal from Court of Appeal; Criminal Appeal No: W-05-178-2010]

H *Reported by Suresh Nathan*

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JUDGMENT

Arifin Zakaria CJ (Malaya):

Introduction

[1] This appeal relates to the ruling made by the trial Judge in the ongoing criminal trial in the High Court at Kuala Lumpur, bearing No 45-9-2009, where the appellant is facing a charge under s. 377B of the Penal Code. The ruling arose from the application by the learned counsel for the appellant for the statement of the Complainant (PW 1), recorded under s. 112 of the Criminal Procedure Code (112 statement), to be produced for examination by the appellant. Learned trial judge dismissed the application and the reasons for his decision are found in his judgment dated 11 May 2010. For the reasons appearing in this judgment, we are not concerned at this stage with the issue of whether the trial judge was correct in his ruling or otherwise. The point issue in this appeal is whether the decision by the trial judge is appealable.

[2] In the Court of Appeal, the prosecution took the stand that the ruling of the trial judge under challenge does not fall within the term "decision" as defined in s. 3 of the Courts of Judicature Act 1964 (CJA) and hence was not appealable. The Court of Appeal agreed with the prosecution. The reasons for their decision are found in what is described as the "broad reasons" read out at the end of the hearing of the appeal.

[3] In his submission before us, learned counsel for the appellant firstly raised the issue of the failure of the Court of Appeal to furnish the grounds of decision until the date of this hearing even though, according to him, the notice of appeal was filed on 28 June 2010. He submitted that without the detailed grounds of judgment, which the appellant is entitled to under r. 91(1) of the Rules of the Federal Court 1995, the appellant is prejudiced in putting up a proper petition of appeal. In support, he cited *Ankur Nath Ganguli v. Public Prosecutor* [1956] 1 LNS 9. On that premise, learned counsel urged this court to direct the Court of Appeal to furnish their grounds of judgment and pending that, the appeal should stand adjourned.

[4] The learned Solicitor General II in his response submitted that the so called "broad reasons" as furnished by the Court of Appeal in this case is in fact the grounds of judgment of the Court

of Appeal and the appellant can proceed with the appeal relying on the said "broad reasons". He submitted that we should look at the content and not the label assigned by the Court of Appeal. Further, since the Court of Appeal had furnished their grounds of judgment earlier, therefore, it is not open to the Court of Appeal at this juncture to furnish any further grounds. He cited a number of authorities in support of his contention. (See *Lorraine Phylis Cohen & Anor. v. Public Prosecutor* [1989] 2 CLJ 131; [1989] 1 CLJ (Rep) 84, *Nathan v. PP* [1972] 1 LNS 99 and *Ankur Nath Ganguli v. Public Prosecutor* [1956] I LNS 9)

[5] Having perused the "broad reasons", we agree with the learned Solicitor General II that the "broad reasons" as given by the Court of Appeal for all intents and purposes is their grounds of judgment in support of their decision and on that premise, it is not open to us to direct the Court of Appeal to furnish further grounds.

[6] In this connection, we wish to state that grounds or reasons for a judgment are required so that parties, particularly the unsuccessful one, would know why the judge arrived at the decision the way he did. The reason need not be long especially when the outcome is obvious. It can be obvious when facts are not in dispute and the law is well established. In such a case, all that is needed is the conclusion and his reason in support of the same. This is not to say that in all cases judgments should be brief and concise. Where facts are disputed, the judge has to discuss and analyse them. Where the law is seriously doubtful, he should argue it out before arriving at a decision. More often than not, judgments become long because facts which are sometimes unnecessary are repeated. Laws and authorities which are well established are recited over and over in the same judgment. Statements are often repeated in different ways. Sometimes, this is intentionally done to stress a point. It only makes the grounds long and unwieldy. Having said that, this is not to discourage judges from writing comprehensive grounds, if they have the ability and time to do so.

[7] In this appeal before us, the grounds of the Court of Appeal though described as "broad reasons" are to us clear and comprehensive, it contains all the ingredients of a speaking judgment. Anyone, familiar with the facts and background of this case would understand why the Court of Appeal arrived at the decision.

[8] We agree that as a general rule, it is incumbent upon the court making a decision to provide reasons for its decision as litigants are entitled to the same. But this grounds of judgment, as we said earlier, need not be long, depending much on the subject matter in issue. In some instances, short and concise grounds of judgment will suffice. As was observed by the Privy Council in *Wendal Swann v. Attorney General of the Turks and Caicos Islands* (Privy Council Appeal No 43 of 2008 delivered on 21 May 2009): "Any court giving a decision after submissions have been made has a clear duty (at least in the absence of the parties expressly or impliedly agreeing otherwise) to give not only a decision, but also the reasons for that decision. *Sometimes very shortly expressed reasons are appropriate, or at least acceptable. In the present case, for instance, provided of course that it represented its reasoning, the Court of Appeal could have complied with its duty by stating that the Chief Justice's decision was right in the sense that it was the only correct outcome and/or because it was a decision which he was entitled to reach as a matter of discretion, and that his reasoning was unassailable.* However, it appears that the Court did not even go that far: if that is indeed the case, the Court of Appeal failed to do its duty. This should not happen again." (Emphasis added)

[9] Similarly, in the case of *Alistair Greene v. Half Moon Bay Hotel* (Privy Council Appeal No 9 of 2008 delivered on 2 June 2009), the Privy Council held as follows:

> Their Lordships are therefore faced with real uncertainty as to what was said when the Court of Appeal dismissed Mr. Greene's appeal. *If an appeal is hopeless, very short oral reasons given by an appellate court may be sufficient.* But especially when the appellant is a litigant in person putting forward a case on which he has very strong feelings, the Court (even if it considers that his case is hopeless and his strong feelings are misguided) should say enough to make clear to the litigant why his appeal has failed. In this case, *it might have been helpful for the Court to spell out to Mr. Greene that his statutory right of appeal was limited to issue of law and that all his complaints seem to have concentrated on matters of fact.* It might also have been helpful and saved time if, when the Court realized that Mr. Greene was asking for written reasons, some written reasons, however brief, had been prepared and made available to him in order to explain why the appeal had been dismissed. (emphasis added)

[10] In the instant case, the issue before the Court of Appeal was whether there is a right of appeal from the decision/ruling of the learned trial judge. The Court of Appeal gave brief but concise reasons citing a number of authorities in support of their decision.

In the circumstances of this case, we think the Court of Appeal had properly discharged its duty. In fact, our learned Chief Justice has been advocating that judges should strive to write short and concise judgment where appropriate. We entirely agree with him. This is what the Court of Appeal had done in this case.

[11] Having ruled as above, we then asked the learned counsel for the appellant to proceed with the appeal.

The Background To The Application

[12] In the course of the cross-examination of PW1 at the trial of this case, the learned counsel for the appellant applied to the court to be furnished with all the statements made by PW1, including his 112 statements. Based on the evidence of PW1 in the court and the charge against the accused the learned counsel claimed that he had a hunch that PW1's statements to the police were inconsistent with his evidence in Court. In support , he referred the court to the police report exh. (P3) lodged by PW1 which stated that the alleged act of sodomy was committed without his consent. Similarly in his evidence in court, he maintained the same stand.

[13] However, the charge the accused is facing is one under s. 377B of the Penal Code and not under s. 377C of the Code, where the prosecution needs to prove that the alleged act was committed without the consent of the PW1. For a charge under s. 377B of the Penal Code consent is not in issue, thus the learned counsel contended this is contrary to the evidence of PW1 that the alleged act was committed without his consent. For this reason, he applied for the statements of PW1 to the police, in particular the 112 statements, to be furnished to him for the purpose of cross-examination of PW1 under s. 145 of the Evidence Act 1950. Learned counsel cited *Husdi v. Public Prosecutor* [1980] 1 LNS 29 and *Dato' Seri Anwar Ibrahim v. PP* [2010] 4 CLJ 265 in support of his application.

[14] The application was dismissed by the learned trial judge. He gave his reasons for the same in his judgment dated 11 May 2010. Against that the appellant appealed to the Court of Appeal.

The Appeal

[15] The Court of Appeal dismissed the appeal on the sole ground that its not seized with the jurisdiction to hear and determine the appeal. It held that the ruling of the learned trial judge which is

the subject of the appeal does not come within the meaning of the word "decision" as defined in s. 3 of the CJA. In the "broad reasons" the Court of Appeal stated:

> (3) The term "decision" is clearly defined by section 3 of the same Act which says:
>
> > 'decision' means judgment, sentence or order, but does not include any ruling made in the course of a trial or hearing of any cause or matter which does not finally dispose of the rights of the parties.
>
> We are fortified in our decision by the accompanying explanatory statement when the word "decision" in section 3 of the Court of Judicature Act 1964 was amended. The reasons for the amendment were stated thus:
>
> > At the moment in the course of hearing a case, if the court decides on the admissibility of any evidence or document, the dissatisfied party may file an appeal. If such appeal is filed, the court has to stop the trial pending the decision of the appeal by the superior court. This causes a long delay in the completion of the hearing, especially when an appeal is filed against every ruling made by the trial court. The amendment is proposed in order to help expedite the hearing of cases in trial court.
>
> (4) It cannot be gainsaid that the appeal filed by the Appellant herein is really an interlocutory appeal as it is an appeal that occurs before the trial court's final ruling on the entire case.

[16] Learned counsel for appellant submitted that the learned judges of the Court of Appeal were wrong in concluding that the appellant's appeal was "an interlocutory appeal" on the ground that, had the 112 statements been supplied to the appellant, this would have been sufficient basis for the appellant to apply to impeach the credibility of PW1. Had this been allowed by the Court of Appeal he said, the rights of the parties would have been finally determined. Therefore, he contended that the order of the learned trial judge in dismissing the Appellant's application for copies of 112 statements is an order falling within the definition of "decision" in s. 3 of the CJA.

[17] The learned Solicitor General II, in his comprehensive reply contended that it is common ground that the ruling was made by the trial judge in the course of an ongoing trial. As such, he said it is clearly not appealable as it does not come within the word "decision" in s. 3 of the CJA.

[18] It should be stated at the outset that, appeal is a creature of statute. Therefore, whether there is a right of appeal or otherwise in a given case will be governed by the relevant statute. In this present case, it will be s. 50 of the CJA, the relevant part of which reads:

> 50. Jurisdiction to hear and determine criminal appeals.
>
> (1) Subject to any rules regulating the proceedings of the Court of Appeal in respect of criminal appeals, the Court of Appeal shall have jurisdiction to hear and determine any appeal against any decision made by the High Court -
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> (a) in the exercise of its original jurisdiction; and
>
> (b) in the exercise of its appellate or revisionary jurisdiction in respect of any criminal matter decided by the Sessions Court.
>
> (emphasis added)

[19] The word "decision" appearing in sub-section (1) of s. 50 is defined in s. 3 of the CJA as follows:

> 3. Interpretation.
>
> "decision" means judgment, sentence or order, but does not include any ruling made in the course of a trial or hearing of any cause or matter which does not finally dispose of the rights of the parties.

[20] This provision came for consideration by the Court of Appeal in *Dato' Seri Anwar Ibrahim v. PP* [1999] 1 CLJ 537. In that case, the issue was whether the matter of bail is appealable to the Court of Appeal, taking into consideration the definition of "decision" in s. 3 of the CJA subsequent to the amendment to it in 1998. In that case, it was held by the Court of Appeal that this new definition of "decision" in the amendment does not include a judgment or order which does not deal with the rights of the parties in the matters in dispute. It was further held that only the outcome of the trial that would have the effect of finally disposing of the rights of parties would come within the word "decision". On this premise, the order of the High Court in refusing bail was held to be unappeallable to the Court of Appeal. NH Chan JCA, in his judgment stated that what was intended to be excluded from the new definition of "decision" is the type of judgments or orders which is termed "interlocutory". He cited *Halsbury's Laws of England,* 4th edn (vol. 26) as to the meaning of "interlocutory" which reads:

> Interlocutory judgments and orders. An order which does not deal with the final rights of the parties, but either (1) is made before judgment, and gives no final decision on the matters in dispute, but is merely on a matter of procedure, or (2) is made after judgment, and merely directs how the declarations of right already given in the final judgment are to be worked out, is termed 'interlocutory'.

[21] The term "interlocutory" used therein is specifically in reference to civil matter as opposed to a criminal matter. (See para. 501 of *Halsbury's Laws of England*, 4th edn. vol. 26). It includes an order made before and after judgment in a matter before the court. Whereas, what s. 3 of the CJA seeks to exclude from the term "decision" is a ruling made in the course of a trial or hearing which does not finally dispose of the rights of the parties. In other words, the ruling must by definition be made in the course of a trial or hearing and not before or after as envisaged in the definition of "interlocutory". In fact, in *Dato' Seri Anwar Ibrahim v. Public Prosecutor* [2010] 4 CLJ 265, this court was asked to decide whether an order made by the trial judge pursuant to s. 51 and/or s. 51A of the Criminal Procedure Code is appealable. In that case, this Court held that the order was a final order as it finally disposed of the rights of the parties and therefore it was appealable. Further, this court held that the order was not made in the course of a trial. For that reason, the order made by the trial judge does not fall within the word "decision" as defined in s. 3 of the CJA. No doubt that the application under s. 51 and/or s. 51A is an "interlocutory" application as defined in *Halsbury*. Therefore, it is highly inaccurate to say that in a criminal trial, all decisions on interlocutory applications are not appealable.

[22] In contrast, we have the Court of Appeal's decision in *Saad Abas & Anor v. Public Prosecutor* [1998] 4 CLJ 575. In that case, the applicants were jointly tried before the Magistrate Court and at the close of prosecution's case, they were acquitted and discharged by the Magistrate. On appeal to the High Court, the decision of the Magistrate was reversed and directed the applicants to enter upon his defence. The applicants applied for leave to appeal to the Court of Appeal under s. 50(2) of the CJA against the order of the High Court. The application was dismissed by the Court of Appeal. In dismissing the application, Lamin PCA stated:

A complete criminal trial involves both the case for the prosecution and the case for the defence. This is implied from the very charge itself. A charge accuses a person of having committed an offence. That suggests that he has to put up defence. The moment the prosecution has proved its case meaning that the court has decided that there is a case for the accused to answer, the accused must therefore forthwith enter his defence. So it would be premature to question whether the decision calling for the accused to enter his defence was right or wrong. The proceedings must continue until the end of the case for the defence and only then would the court be able to finally decide the fate of the accused. On the other hand, if he is acquitted at the end of the case for the prosecution, that means that the court has decided the fate of the accused and that as far as that court is concerned, the accused is a free man. Similarly, when a High Court judge rules at the end of an appeal by the prosecutor in a case where the accused has been acquitted at the end of prosecution case that the accused must enter his defence, it is as good as saying that the sessions court judge himself has decided to call for the defence assuming that he has analysed the case in the way that the High Court judge has done. Only after he has heard the defence can he finally decide the fate of the accused.

[23] The learned Solicitor General II also referred us to the case of *Public Prosecutor v. Hoo Chang Chwen* [1962] 1 LNS 123, which was a case decided under the Singapore Criminal Procedure Code (Cap. 132). This case concerned a ruling by the Magistrate ordering copies of statements made to the police by the complainant to be furnished to the defence. The prosecution appealed. The High Court dismissed the appeal on the ground that the ruling was made in the midst of a trial and hence it is not appealable. Rose CJ in dismissing the appeal observed:

As Mr. Saurajen, for the Crown, submits, whether or not any particular statement is a first information or one taken in the course of Police investigation is eminently a question of fact depending upon the circumstances of each case. In the present case, it may well be that the learned Magistrate has come to a wrong conclusion on the matter; but that is not the point at issue as far as this court is concerned.

Assuming that the defence had wished these statements to be in and the Magistrate had found the other way and excluded the statements on the ground that they were inadmissible, it would surely seem to be beyond argument that the defence could not have

appealed in the middle of the trial against a procedural ruling, which is eminently within the discretion of the trial court. Why, therefore, should the Crown be in a better position than the defence.

[24] The underlying reason behind the amendment to the definition of "decision" in s. 3 of the CJA, introduced by Amendment Act A 1031 of 1998, which came into effect on 31 July 1998 is to stop parties from stalling a trial before the trial court by filing appeal after appeal on rulings made by the trial court in the course of a trial. This is what the amendment seeks to achieve as evident from the explanatory statement to the Bill which reads:

2. Clause 2 seeks to amend section 3 of Act 91.

At the moment, in the course of hearing a case, if the court decides on the admissibility of any evidence or document, the dissatisfied party may file an appeal. If such appeal is filed, the court has to stop the trial pending the decision of the appeal by the superior court. This cause a long delay in the completion of the hearing, especially when an appeal is filed against every ruling made by the trial court. The amendment is proposed in order to help expedite the hearing of cases in trial courts.

[25] Quite apart from the explanatory statement to the Bill the definition of "decision" by itself, to our mind, is sufficiently clear, and it is the duty of the court to give effect to the same. Justice demands that cases should move without unnecessary interruption to their final conclusion. That is what the amendment seeks to achieve. The right of a party who is aggrieved by a ruling, after all, is not being compromised, as the party can always raise the issue during the appeal, if any, to be filed after the trial process is brought to its conclusion.

Conclusion

[26] For the above reasons, we agree with the Court of Appeal that the ruling of the trial court in this case is not a "decision" as defined in s. 3 of the CJA and hence it is not appealable. In the light of our decision, it is therefore not necessary for us to consider grounds 3 and 4 of the petition.

[27] Accordingly, the appeal is dismissed.